



LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens

AGENCY: Legal Services Corporation.

ACTION: Proposed Program Letter.

SUMMARY: This proposed program letter serves as a companion to 45 CFR part 1626.

The proposed program letter should have been published in the Federal Register with the further notice of proposed rulemaking (FNPRM) on February 5, 2014, 79 FR 6859. LSC seeks comments on the proposed program letter. Additional information on the request for comments is located in the SUPPLEMENTARY INFORMATION section.

DATES: Comments on the proposed program letter are due [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: Written comments must be submitted to Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 337-6519 (fax) or 1626rulemaking@lsc.gov. Electronic submissions are preferred via email with attachments in Acrobat PDF format. Written comments sent to any other address or received after the end of the comment period may not be considered by LSC.

FOR FURTHER INFORMATION CONTACT: Stefanie K. Davis, Assistant General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, (202) 295-1563 (phone), (202) 337-6519 (fax), 1626rulemaking@lsc.gov

SUPPLEMENTARY INFORMATION:

In 2003, LSC added a list of documents establishing the eligibility of aliens for legal assistance from LSC funding recipients as an appendix to part 1626. 68 FR 55540, Sept. 26, 2003. The appendix has not changed since 2003, although immigration documents and forms have changed and Congress has authorized LSC recipients to provide legal assistance to new categories of eligible aliens. LSC believes that the frequently changing nature of immigration documents and forms requires a more flexible and responsive means of informing recipients of the changes than the informal rulemaking process provides. Consequently, in a notice of proposed rulemaking published on August 21, 2013, LSC announced its intention to remove the appendix to part 1626 and publish the information contained in the appendix as a program letter. 78 FR 51696, Aug. 21, 2013. Because the initial revision of the appendix and reclassification as a program letter is a change to the regulation, it is being done pursuant to the LSC rulemaking protocol. As such, LSC is publishing the program letter in the Federal Register for public comment.

LSC published a FNPRM on February 5, 2014 proposing requesting comment on additional revisions to part 1626. 79 FR 6859, Feb. 5, 2014. The proposed program letter was intended to accompany the FNPRM. The comment period for this program letter will remain open for thirty days from the date of publication of the letter in the Federal Register. Because this document does not affect the substance of the FNPRM, the deadline for comments on the FNPRM will remain March 7, 2014.

DRAFT Program Letter [#]

TO: All LSC Program Directors

FROM: James J. Sandman, President

DATE: [], 2014

SUBJECT: Alien Eligibility under LSC Regulation Part 1626

LSC published a final rule revising 45 C.F.R. Part 1626, “Restrictions on Legal Assistance to Aliens,” on [DATE]. Revised Part 1626 was published without the Appendix. The information contained in the Appendix will be published instead as a Program Letter and an accompanying chart describing the categories of aliens eligible for legal assistance from LSC recipients and containing a non-exhaustive list of examples of acceptable documentation showing eligibility under Part 1626. These documents should be read together with Part 1626 in making eligibility determinations.

Documentation

The documents identified as acceptable to establish eligibility fall into one of two categories: 1) documents regarding the immigration status of an alien; or 2) documents providing evidence that the alien has experienced qualifying abuse or otherwise meets the requirements of 45 C.F.R. § 1626.4 regarding the Violence Against Women Act (VAWA) and other anti-abuse statutes.

Special Considerations

Victims of trafficking are covered by different provisions of 45 C.F.R. § 1626.4 depending on the nature of the trafficking activity. Recipients should determine whether an alien is a victim of trafficking under VAWA or section 101(a)(15)(U) of the Immigration and Nationality Act, or a victim of severe forms of trafficking under the Trafficking Victims Protection Act, 22 U.S.C. § 7101 et seq. The facts of an alien’s situation may indicate that the alien is eligible for assistance under one or more of these statutes.

Eligibility for assistance based on qualifying for a U-visa or being a victim of severe forms of trafficking requires consideration of other statutory factors in addition to the qualifying crime. See 8 U.S.C. § 1101(a)(15)(U); 22 U.S.C. § 7105(b)(1)(C). Recipients must document that an alien meets all relevant statutory factors.

Additional Resources

If you have any questions or concerns regarding this Program Letter or for further guidance, please contact LSC General Counsel Ronald S. Flagg. Additional information regarding the documentation contained in the chart can be found at the U.S. Customs and Immigration Service website (<http://www.uscis.gov>) and at the Anti-Trafficking in Persons Division of the Office of Refugee Resettlement within the Department of Health and Human Services website (<http://www.acf.hhs.gov/programs/orr/programs/anti-trafficking>).

ALIEN ELIGIBILITY FOR REPRESENTATION BY LSC-FUNDED PROGRAMS

Alien Category	Statutory Authorization	Regulatory Authorization of Eligibility in 45 CFR part 1626	Verification Documents
Lawful Permanent Resident	8 U.S.C. 1101(a)(20)	§ 1626.5(a)	<p>(1) Alien Registration Receipt Card: Form I-551 or Form I-151; <i>or</i></p> <p>(2) Memorandum of Creation of Record of Lawful Permanent Residence: Form I-181 with approval stamp; <i>or</i></p> <p>(3) Passport bearing immigrant visa or stamp indicating admission for lawful permanent residence; <i>or</i></p> <p>(4) Order granting residency or adjustment of status; <i>or</i></p> <p>(5) Permit to Reenter the United States: Form I-327; <i>or</i></p> <p>(6) Arrival/Departure Record: CBP Form I-94 with stamp indicating admission for lawful permanent residence; <i>or</i></p> <p>(7) Any verification of lawful permanent residence in the U.S. to include any one of the following: authoritative document from the United States Immigration and Naturalization Service (INS);¹ or the Department of Homeland Security (DHS), including online or email verification.</p>
Spouse of a U.S. citizen, or a parent of a U.S. citizen, or an unmarried child under 21 of U.S. citizen; <i>and</i> who has filed an application for adjustment of status to lawful permanent resident	8 U.S.C. §§ 1158(b)(3), 1255, 1255a, 1259	§ 1626.5(b)	<p>(1) Proof of filing of a qualifying application for adjustment of status to permanent residency, which may include one or more of the following: a fee receipt or an online or email printout showing that the application was filed with the INS prior to 2003, U.S. Citizenship and Immigration Service (USCIS), the Department of Homeland Security (DHS), or the immigration court; <i>or</i> a filing stamp showing that the application was filed; <i>or</i> a grant of a fee waiver for such application, a biometrics appointment notice indicating such pending application, a printout from the USCIS online service, or a copy of the application accompanied by a notarized statement signed by the</p>

¹ For any immigration status document obtained prior to March 1, 2003.

			<p>alien that such form was filed; <i>and</i></p> <p>(2) Proof of relationship to U.S. citizen, which may include one or more of the following: a copy of the person's marriage certificate accompanied by proof of the spouse's U.S. citizenship; <i>or</i> a copy of the birth certificate, baptismal certificate, adoption decree, or other document demonstrating the individual is under the age of 21, accompanied by proof that the individual's parent is a U.S. citizen; <i>or</i> a copy of Petition for Alien Relative: Form I-130, or Petition for American, Widow(er) or Special Immigrant: Form I-360 containing information demonstrating the individual is related to such U.S. citizen, accompanied by proof of filing.</p>
Asylee	8 U.S.C. § 1158	§ 1626.5(c)	<p>(1) Arrival/Departure Record: Form I-94 or passport stamped "asylee" or "§ 208";</p> <p><i>or</i></p> <p>(2) Order granting asylum from INS², DHS, immigration judge, the Board of Immigration Appeals (BIA), or federal court; <i>or</i></p> <p>(3) Refugee Travel Document : Form I-571;</p> <p><i>or</i></p> <p>(4) Employment Authorization Card: Form I-688B³ or Employment Authorization Document: Form I-766 coded "8 CFR § 274a.12(a)(5)(asylee)" or "A5";</p> <p><i>or</i></p> <p>(5) Any verification of lawful presence in the U.S. or other authoritative document from INS or DHS, including online or email verification</p>
Refugee	8 U.S.C. § 1157	§ 1626.5(c)	<p>(1) Arrival/Departure Record: Form I-94 or passport stamped "refugee" or "§ 207"; <i>or</i></p> <p>(2) Employment Authorization Card: Form I-688B⁴ or Employment Authorization Document: Form I-766 coded "8 CFR § 274a.12(a)(3)(refugee)" or "A3" or "8 CFR § 274a.12(a)(4)(paroled refugee)" or "A4";</p> <p><i>or</i></p>

² *Supra* note 1.

³ Dated before April 3, 2009.

⁴ *Supra* note 3.

			<p>(3) Refugee Travel Document: Form I-571; <i>or</i></p> <p>(4) Any verification of lawful presence in the U.S. or other authoritative document from INS or DHS, including online or email verification</p>
Individual Granted Withholding of Deportation, Exclusion, or Removal	8 U.S.C. § 1231(b)(3) (withholding of removal); former INA section 243(h) (withholding of deportation or exclusion)	§ 1626.5(e)	<p>(1) Arrival/Departure Record: Form I-94 stamped “§243(h)” or “§241(b)(3)”; <i>or</i></p> <p>(2) Order granting withholding of deportation/deferral of removal from DHS, U.S. Immigration and Customs Enforcement (ICE), immigration court, BIA, or federal court; <i>or</i></p> <p>(3) Temporary Resident Card: Form I-688⁵ or Employment Authorization Document: Form I-766 coded “8 CFR § 274a.12(a)(10)(withholding of deportation)” or “A10”; <i>or</i></p> <p>(4) Any verification of lawful presence in the U.S. or other authoritative document from INS or DHS, including online email verification</p>
Conditional Entrant	8 U.S.C. 1153(a)(7) ⁶	§ 1626.5(d)	<p>(1) Arrival/Departure Record: Form I-94 or passport stamped “conditional entrant”; <i>or</i></p> <p>(2) Any verification of lawful presence in the U.S. or other authoritative document from INS or DHS, including online or email verification</p>
Special Agricultural Worker Temporary Resident	8 U.S.C. 1160	§ 1626.10(d)	<p>(1) Temporary Resident Card: Form I-688⁷, I-688A, Employment Authorization Card: Form I-688B⁸, or Employment Authorization Document: Form I-766 indicating issuance under INA § 210 (or under 8 C.F.R. § 274a.12(a)(2) or coded “A2,” with other evidence indicating eligibility under INA § 210); <i>or</i></p> <p>(2) Any verification of lawful presence in the U.S. or other authoritative document from INS or DHS, including online or email verification</p>
H-2A Temporary Agricultural Worker	8 U.S.C. § 1101(a)(15)(H)	§ 1626.11(a)	<p>(1) Arrival/Departure Record: Form I-94 or passport stamped “H-2A”; <i>or</i></p>

⁵ *Supra* note 3.

⁶ As in effect prior to April 1, 1980.

⁷ *Infra* note 3.

⁸ *Infra* note 3.

			(2) Any verification of lawful presence in the U.S. or other authoritative document from INS or DHS, including online or email verification
H-2B Temporary Non-Agricultural Worker	8 U.S.C. § 1101(a)(15)(H)	§ 1626.11(b)	(1) Arrival/Departure Record: Form I-94 or passport stamped “H-2B” and evidence that the worker is employed in forestry; <i>or</i> (2) Any verification of lawful presence in the U.S. or other authoritative document from INS or DHS, including online or email verification
Aliens subjected to battery, extreme cruelty, sexual assault, or trafficking	Pub. L. 104-208, Div. A, Tit. V, § 502(a)(2)(C), 110 Stat. 2009, 3009-60; Pub. L. 109-162, § 164, 119 Stat. 2960, 2978.	§ 1626.4(c)(1), (c)(2)	(1) A decision or other authoritative document from INS, DHS, USCIS, immigration judge, BIA, federal or state court finding or verifying that a person has been a victim of the qualifying abuse; <i>or</i> (2) An affidavit or unsworn written statement made by the alien; a written summary of a statement or interview of the alien taken by others, including the recipient; a report or affidavit from police, judges, and other court officials, medical personnel, school officials, clergy, social workers, other social service agency personnel; an order of protection or other legal evidence of steps taken to end the qualifying abuse; evidence that a person sought safe haven in a shelter or similar refuge from the qualifying abuse; photographs; documents or other evidence of a series of acts that establish a pattern of qualifying abuse; <i>or</i> (3) An application for administrative or judicial relief including an assertion that the applicant has been a victim of the qualifying abuse, but only <i>if</i> such application is accompanied or supplemented by any of the evidence described in the preceding paragraph (2).
Victims of severe forms of trafficking	22 U.S.C. § 7105(b)(1)(B)	§ 1626.4(c)(3)	(1) An affidavit or unsworn written statement made by the alien; a written summary of a statement or interview of the alien taken by others, including the recipient; a report or affidavit from police, judges, and other court officials, medical personnel, school officials, clergy, social workers, other social service agency personnel; an order of protection or other legal evidence of steps taken to end the

			<p>severe forms of trafficking; evidence that a person sought safe haven in a shelter or similar refuge from the severe forms of trafficking; photographs; documents or other evidence of a series of acts that establish a pattern of severe forms of trafficking; <i>or</i></p> <p>(2) An application for administrative or judicial relief including an assertion that the applicant has been a victim of severe forms of trafficking, but only <i>if</i> such application is accompanied or supplemented by any of the evidence described in the preceding paragraph (1); <i>or</i></p> <p>(3) Certification letter from the U.S. Department of Health and Human Services (HHS); <i>or</i></p> <p>(4) Telephonic verification of certification by calling the HHS trafficking verification line, (202) 401-5510, or (866) 401-5510.</p>
Minor victims of severe forms of trafficking	22 U.S.C. § 7105(b)(1)(B)	§ 1626.4(c)(3)	<p>(1) Eligibility letter from HHS; <i>or</i></p> <p>(2) Interim Eligibility Letter from HHS; <i>or</i></p> <p>(3) An affidavit or unsworn written statement made by the alien; a written summary of a statement or interview of the alien taken by others, including the recipient; a report or affidavit from police, judges, and other court officials, medical personnel, school officials, clergy, social workers, other social service agency personnel; an order of protection or other legal evidence of steps taken to end severe forms of trafficking; evidence that the alien sought safe haven in a shelter or similar refuge from severe forms of trafficking; photographs; documents or other evidence of a series of acts that establish a pattern of severe forms of trafficking; <i>or</i></p>
Certain family members of victims of severe forms of trafficking (“derivative T-visa holders”)	22 U.S.C. § 7105(b)(1)(B)	§ 1626.4(c)(3)	<p>(1) Application for Immediate Family Member of T-1 Recipient: Form I-914, Supplement A; <i>or</i></p> <p>(2) Notice of Action: Form I-797, visa, Arrival/Departure Form: Form I-94, or passport stamped T-2, T-3, T-4, or T-5, or T-6; <i>or</i></p> <p>(3) Employment Authorization Card: Form I-688B or Employment Authorization Document: Form I-766</p>

			<p>coded “(c)(25)”;<i> or</i></p> <p>(4) Documentary evidence showing that the primary applicant for immigration relief is a victim of severe forms of trafficking as described above; and credible evidence showing that the alien is a qualified family member of the primary applicant.</p>
Aliens qualified for a U-visa	Pub. L. 109-162, § 164, 119 Stat. 2960, 2978; 8 U.S.C. § 1101(a)(15)(U).	§ 1626.4(c)(4)	<p>(1) Petition for U Nonimmigrant Status: Form I-918; <i>or</i></p> <p>(2) Petition for Immediate Family Member of U-1 Recipient: Form I-918, Supplement A; <i>or</i></p> <p>(3) Notice of Action: Form I-797, visa, Arrival/Departure Record: Form I-94, or passport stamped U-1, U-2, U-3, U-4, or U-5; <i>or</i></p> <p>(4) Employment Authorization Card: Form I-688B or Employment Authorization Document: Form I-766 coded “(a)(19)” (principal) or “(a)(20)” (derivative); <i>or</i></p> <p>(5) A decision or other authoritative document from INS, DHS, USCIS, immigration judge, BIA, federal or state court finding or verifying that a person qualifies for a U-visa; <i>or</i></p> <p>(6) An affidavit or unsworn written statement made by the alien; a written summary of a statement or interview of the alien taken by others, including the recipient; a report or affidavit from police, judges, and other court officials, medical personnel, school officials, clergy, social workers, other social service agency personnel; an order of protection or other legal evidence of steps taken to end the qualifying abuse; evidence that the alien sought safe haven in a shelter or similar refuge from the qualifying abuse; photographs; documents or other evidence of a series of acts that establish a pattern of qualifying abuse; <i>or</i></p> <p>(7) An application for administrative or judicial relief including an assertion that the applicant qualifies for a U-visa, but only <i>if</i> such application is accompanied or supplemented by any of the evidence described in the preceding paragraph (6); <i>or</i></p> <p>(8) Documentary evidence showing that the primary applicant for immigration relief qualifies for a U-visa as described above; and credible</p>

			evidence showing that the alien is a qualified family member of the primary applicant.
--	--	--	--

Dated: March 4, 2014

Stefanie K. Davis

Assistant General Counsel

[FR Doc. 2014-05008 Filed 03/06/2014 at 8:45 am; Publication Date: 03/07/2014]